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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,474	08/01/2001	Mykhajlo Pavlykivskyj	PAVL 101	3261

7590 07/16/2003

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EXAMINER

PONOMARENKO, NICHOLAS

ART UNIT	PAPER NUMBER
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2834

DATE MAILED: 07/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/890,474	Applicant(s) PAVLYKIVSKYJ, MYKHAIJLO	
	Examiner Nicholas Ponomarenko	Art Unit 2834	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-19 is/are pending in the application.
- 4a) Of the above claim(s) 1-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 13-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 13-19 are rejected under 35 U.S.C. 101 because the claimed invention is not supported by either a clearly asserted utility or a well established utility.

Provided arguments about operability of the claimed invention are not supported by scientific principles since no source of power for driving the vehicle is established. This is an attempt to create a perpetual motion machine. Applicant's assertion that a battery is used to start the process of power generation is not convincing, because the battery is used only to start the process of generating an electrical power and after this point no usage of battery, as the source of the vehicle driving power, is expected, which is implied by the disclosure of the system. This implication of a "self-propelling" system does not provide for a clearly asserted or well-established utility and makes the claimed invention inoperative.

Claims 13-19 also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a clearly asserted utility or a well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention.

3. When a patent applicant presents an application describing an invention that contradicts known scientific principles, or relies on previously undiscovered scientific

phenomenon, the burden is on the examiner simply to point out this fact to the appellant... The burden shifts to appellant to demonstrate either that his invention, as claimed, is operable or does not violate basic scientific principles, or that those basic scientific principles are incorrect. *As stated by the Patent Office Board of Appeals, Newman v. Quigg 681 F.Supp 16, at 18, 5 U.S.P.Q. 2d 1880(1988).*

Applicants are required to furnish a working model of their invention in order to demonstrate its operability. See MPEP § 608.03.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

1. When the claims are amended, applicant(s) should state in detail where in the original disclosure or in the drawings the amended features find support.

No new matter may be introduced.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Nicholas Ponomarenko** whose telephone number is **(703) 308-1776**.

3. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist, Mon-Fri, 8 am-530 pm

Phone: (703) 308-0956

Fax: (703) 305-3431

np

July 14, 2003



Nicholas Ponomarenko
Primary Examiner
Technology Center 2800